

IN THE HIGH COURT OF JUDICATURE AT PATNA

First Appeal No.313 of 1979

(Against the judgment and decree dated 22.12.1978 passed by Sri Raja Ram Singh, Subordinate Judge, Khagaria in Title Suit No.94 of 1975/33 of 1977).

=====

Kranti Devi & Ors

.... .. Plaintiffs-Appellants

Versus

Om Bahadur Jha & Ors

.... .. Defendants-Respondents

=====

Appearance :

For the Appellant/s : Mr. Dhruv Narain, Sr. Advocate
Mr. Birendra Singh, Advocate
Mr. Ram Sevak Choudhary, Advocate with him.
For the Respondent/s : None

=====

CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR SAHOO
CAV JUDGMENT

Date:24-07-2012

Mungeshwar
Sahoo, J.

(1) The original plaintiff, Lakshmi Narain Aarya who died during the pendency of this appeal and substituted by legal representatives had filed this First Appeal against the judgment and decree dated 22.12.1978 passed by the learned Subordinate Judge, Khagaria in Title Suit No.94 of 1975/33 of 1977 whereby the plaintiff's suit was dismissed.

(2) The plaintiff filed the aforesaid suit praying for declaration of title and recovery of possession with respect to Schedule I property i.e. 1 bigha 15 katthas 5 dhurs land out of plot no.499, khata no.320 of village Mathurapur. According to the plaintiff, plot no.70 and plot no.499 measuring 4 acres 34 decimals and 2 acres 63 decimals respectively were recorded under khata

no.380, tauji no.3719 in the name of Janki Prasad Singh as bataidar with occupancy right within the zamindari of Raj Bainaili and Mungeri Sah was recorded as tenure holder. Said bataidar, Janki Prasad Singh orally surrendered the said lands to the tenure holder, Mungeri Sah who came in possession thereof. Mungeri Sah died leaving behind his two sons, Jugal Behari Sah and Ram Sahay Sah. Jugal Behari Sah died leaving behind two sons, Bhagwan Das and Anandi Prasad Sah and likewise, Ram Sahay Sah also died leaving a son, Kishun Sah. In Partition Suit No.620 of 1910 between the aforesaid legal heirs of Mungeri Sah, plot no.499 was allotted in the share of Bhagwan Das and plot no.70 was allotted to Anandi Sah and Ram Sahay Sah and accordingly, they came in possession of the lands allotted in their share. They also dealt with the lands according to their need. The legal heirs of Bhagwan Das namely Pratap Chand Sah sold suit plot no.499 to Girja Devi wife of Kishun Sah by a registered sale deed dated 28.07.1934 for a consideration of Rs.1300. Girja Devi came in possession of the land and her name was mutated in the serista of Raj Bainaili and she was paying rent. After vesting, her name was mutated and jamabandi was opened in her name. The plaintiff specifically stated that Janki Prasad Singh executed a deed of dedication in respect of his entire properties in the name of Sri 108 Sri Thakur Ramjanki Ji Maharaj established by him in village

Mathurapur.

(3) The further case of the plaintiff is that Girja Devi had 4 sons and in private partition in the year 1956 between the sons, the plot no.499 was allotted to Laddu Lal and Satya Narain Prasad the two sons who came in exclusive possession thereof. Both of them when desired to sell plot no.499, the plaintiff and defendant 1st party negotiated and plaintiff purchased 1 bigha 15 katthas 5 dhurs which is described in Schedule I of the plaint for consideration of Rs.2,000 through a registered sale deed on 18.08.1962. Likewise, defendant 1st party purchased the Schedule II property out of the said plot in the name of his mother-in-law, defendant no.3, Genda Devi on 17.08.1962. Thereafter, the property was measured and a ridge was made between the Schedule I and Schedule II property. However, subsequently, at the instance of the defendant 2nd party, a proceeding under Section 144 was initiated which was converted to 145 Cr.P.C. proceeding which was decided against the plaintiff. Thereafter, defendant 1st party and defendant 2nd party dispossessed the plaintiff from the suit land on 15.11.1963. Hence, the suit was filed.

(4) The defendants-respondents appeared and filed separate contesting written statement. Besides taking various legal and ornamental pleas mainly they contented that Janki Prasad Singh

never surrendered either plot no.70 or plot no.499. The sale deed executed by legal heirs of Mungeri Sah to Girja Devi has no legal basis. Therefore, the vendee neither derived title nor came in possession over the property sold. The mutation or grant of rent receipt will not vest title on Girja Devi in absence of any right to sell possessed by vendor. In view of Section 22 of Bihar Tenancy Act when Girja Devi purchased the land, she acquired Bakast interest and, therefore, there was no question of mutation or payment of rent arises. The recorded bataidar, Janki Prasad Singh died issueless. Therefore, his properties including the suit properties passed on to his Gotias namely Shital Singh and Chunchun Singh, sons of Jugeshwar Singh who came in possession after inheritance. The defendant 2nd party purchased plot no.499 measuring 3 bighas 5 dhurs from Shital Singh and Chunchun Singh by registered sale deed dated 18.06.1960 with defendant 1st party. Subsequently, there was partition between defendant 1st party and defendant 2nd party by registered partition deed dated 01.05.1962 and the plot no.499 was partitioned half and half. They applied for commutation of Bhawli rent of khesra no.499 into cash rent. Objection was raised by Laddu Lal and Satya Narain Prasad, sons of Girja Devi claiming to have purchased the same from heirs of Mungeri Sah. Therefore, to avoid future trouble, the defendant 1st party got executed a registered sale

deed from Laddu Lal and Satya Narain Prasad in respect of the portion of plot no.499 which was in his possession and in which he had already acquired valid title by virtue of the registered sale deed dated 18.06.1960 executed by legal heirs of Janki Prasad Singh. This time he got the sale deed executed in the name of his mother-in-law, Smt. Genda Devi. He got the sale deed only to avoid dispute and complication in future. There is no such land on the spot as described in Schedule I of the plaint. The defendant denied to have dispossessed the plaintiff.


(5) The defendant 2nd party filed separate contesting written statement. The contention of defendant 2nd party is in the same line. In addition to the same defence, the defendant 2nd party alleged that the defendant 1st party and the defendant 2nd party contested post of Mukhiya in 1962 and, therefore, there was enmity and, therefore, the defendant 1st party in collusion with Laddu Lal and Satya Narain Prasad got the collusive sale deed in the name of her mother-in-law, Genda Devi. He set up the plaintiff to claim over the partition of land in possession of defendant 2nd party. Laddu Lal, Satya Narain Prasad or Girja Devi had no title or possession nor could they ever sell the property to anybody.

(6) The other defendants although filed written statement but they did not contest.

(7) On the basis of the aforesaid pleadings of the parties, the trial court framed the following issues:


- I. Whether the suit as framed is maintainable?
- II. Whether the plaintiff has got cause of action and right to sue?
- III. Whether the suit is barred by Limitation?
- IV. Whether the plaintiff has got title over the suit land?
- V. Whether the story of possession and dispossession as alleged by the plaintiff is true?
- VI. To what relief or reliefs the plaintiff is entitled to?

(8) While deciding issue nos.4 and 5 jointly, the learned court below came to the conclusion that the story of surrender purported by plaintiff is neither supported by any legal evidence nor appears to be in conformity with legal provisions of law as such, plaintiff has not been able to prove the story of surrender vide paragraph 9. Laddu Lal was not in possession of the land as such, Girja Devi never came in possession of the land on the basis of sale deed, Exhibit 2 of the year 1934. Although, there is no sufficient evidence on the record that Chunchun Singh and Shital Singh were the legal heirs of Janki Prasad Singh but P.W.9 has admitted that they belonged to the family of Janki Prasad Singh. The sale deed executed by Laddu Lal and Satya Narayan Prasad in favour of plaintiff and defendant 1st party were never acted upon and they were only paper transactions. Thus, since the title and possession of the




vendor of the plaintiff over the suit land has not been established so, the plaintiff did not acquire any title on the basis of sale deed executed by Laddu Lal and Satya Narain Prasad. Even if the vendor of the plaintiff had any title over the said plot, defendant 1st party acquired title over the suit land because the sale deed was executed in his favour earlier. If the plaintiff acquired any title on the basis of the sale deed executed in his favour by Laddu Lal and Satya Narain Prasad he got title over the land in the northern portion of plot no.499 but he has claimed the land from south in the plot in the plaint which is admittedly in possession of defendant 2nd party accordingly, dismissed the plaintiff's suit.

(9) The learned senior counsel, Mr. Dhruv Narain appearing on behalf of the appellant submitted that the learned trial court did not appreciate the case of the plaintiff in its right perspective and held the registered sale deed of the year 1934 as not acted upon on the basis of surmises and conjectures. The trial court also did not rely on the final decree passed in partition suit of the year 1910 on the oral evidence of the plaintiff P.W.18 who has stated that the surrender was made in the year 1930. The reasoning of the trial court that when surrender was made by the bataidar in 1930, how the said property was partitioned in the year 1910 cannot be accepted as valid reason for not relying the final decree of the



partition suit particularly when the presumption of its validity and legality is in favour of the plaintiff. The learned trial court also wrongly discarded the rent receipts granted by Raj Bainaili on flimsy grounds by wrong appreciation of Section 22 of the Bihar Tenancy Act. According to the learned counsel, the case of the plaintiff that the property was partitioned in the year 1910 is not challenged by the defendants and the said partition is not dependent on surrender of the bataidar. The partition took place between the tenure holder and, therefore, the tenure holder in whose share the property fell in partition was only entitled to receive rent. This aspect of the matter was not considered by the trial court.

(10) The learned counsel further submitted that the heirs of Janki Prasad Singh who sold the property in favour of defendant 1st party and defendant 2nd party in the year 1960 had no title at all because the court himself held that there is no evidence as to how they succeeded to the property of Janki Prasad Singh. Further, Janki Prasad Singh died issueless and he executed a registered “samarpannama” with respect to his entire property and dedicated the same to Sri 108 Sri Thakur Ramjanki Ji Maharaj which was produced by the plaintiff being Exhibit 6 but the trial court did not consider the same. Further, the defendant 1st party himself purchased the same very property from Laddu Lal and Satya Narain



Prasad by registered sale deed in the year 1962 along with the plaintiff and thereby the defendant 1st party admitted the title of Satya Narain Prasad and Laddu Lal. In such circumstances, the defendants are estopped from challenging the title of Laddu Lal and Satya Narain Prasad as it is well settled principles of law that one person cannot be allowed to aprobate and reprobate. Had the defendant 1st party acquired title on the basis of the registered sale deed executed by Chunchun Singh and Shital Singh in the year 1960, there was no question of getting another sale deed from Laddu Lal and Satya Narain Prasad in the year 1962 with respect to the same very property but the learned court below did not consider all these aspects of the matter. The trial court also committed error of record by holding that the description of the property in the sale deed and the description of the boundary in the plaint do not tally because there was some mistake in the sale deed of the plaintiff while describing the boundary. Therefore, a correction deed was executed which has been produced by the plaintiff marked as Exhibit 5 and if the same is taken into account, there is no discrepancy in the boundary mentioned in the plaint and mentioned in the sale deed. On these grounds, the learned counsel submitted that the impugned judgment and decrees are liable to be set aside and the plaintiff's suit be decreed.

(11) At the time of hearing of this First Appeal, nobody appeared on behalf of the respondents.

(12) In view of the above contentions of the appellant, the point arises for consideration in this appeal is as to “whether the plaintiff has been able to prove his title over the suit property and he is entitled for recovery of possession of the same” and “whether the impugned judgment and decrees are sustainable in the eye of law?”

(13) As stated above, the plaintiff's case in short is that originally Mungeri Sah was the tenure holder of the suit property. Janki Prasad Singh was bataidar. Janki Prasad Singh surrendered the suit property orally in favour of tenure holder, Mungeri Sah. Subsequently, on partition between the heirs of Mungeri Sah, the suit plot fell in the share of Pratap Chand Sah who sold the plot in the name of Girja Devi by registered sale deed dated 28.07.1934 for Rs.1300. The sons of Girja Devi namely Laddu Lal and Satya Narain Prasad sold the Schedule I property to the plaintiff and Schedule II property to the defendant 1st party. On the contrary, the defendant's case is that Janki Prasad Singh never surrendered the suit land. He died issueless and his entire property was inherited by Shital Singh and Chunchun Singh being the Gotias and they sold the property to defendants in the year 1960 and there was partition between defendant 1st party and defendant 2nd party.


(14) In support of their respective cases, the parties have adduced oral as well as documentary evidences. Let us consider the evidences of the parties.

(15) P.W.1 is the original plaintiff. He has stated the same thing as pleaded in the plaint, therefore, it is not reiterated here. He has proved his sale deed as Exhibit 2. P.W.2, Shyam Sumran Prasad has proved Register II i.e., Jamabandi No.374 which is in the name of Girja Devi. He has stated that this jamabandi was with respect to 2 bighas 15 katthas 5 dhurs and the rent was Rs.6.94 and cess was 44 paise. Out of that jamabandi, 1 bigha 5 katthas was deducted and Jamabandi No.931 was opened in the name of Genda Devi. There is 1 bigha 10 katthas 5 dhurs is still there in the original jamabandi. He has proved the rent receipt, Exhibit 3 series. P.W.3 has proved rent receipt, Exhibit 3/F to 3/G. He has also proved Register D, Exhibit 4.

(16) P.W.4 has stated that the orchard measuring 3 bighas was in possession of Bhagwan Das and after his death, his son came in possession who sold the property to Kishun Lal Sah(Kishun Lal is the husband of Girja Devi). Subsequently, the sons of Girja Devi namely Lakshmi Narayan sold 1 bigha 15 katthas to plaintiff and defendant no.1. Janki was never in possession of the property. P.W.5 has also stated the same thing as that of P.W.4. P.W.6 has

proved Exhibit 2A, the sale deed which was executed in favour of the plaintiff. He has proved the correction deed as Exhibit 5. This witness is scribe of the sale deed. He has stated that defendant no.1, Om Bahadur Jha has signed as witness in this sale deed. He has proved Exhibit A/1, the sale deed in the name of defendant no.1. This witness has also proved passing of consideration. It may be mentioned here that plaintiff is also witness in the sale deed of defendant no.1.

(17) P.W.7 has stated that he is the shivayat of Thakurbari established by Janki Prasad Singh. His father was bhagina of Janki Prasad Singh. In the year 1936, by registered deed of dedication, Janki Prasad Singh dedicated his entire property to Thakurbari. He has proved the said registered deed as Exhibit 6. He has further stated that till his lifetime, Janki Prasad Singh was shivayat. After his death, Nunu Prasad Choudhary became shivayat. After death of Nunu Prasad Choudhary, this witness became the shivayat. On the death of Janki Prasad, his entire property vested in the Thakurbari. P.W.8 has proved the rent receipt, Exhibit 7 to 7/O. P.W.9 has stated that prior to execution of sale deed in favour of the plaintiff, the suit property was in possession of Laddu Lal and it was never in possession of Kusheshwar Jha and Om Bahadur. Chunchun or Shital were also never in possession. P.W.10 has also stated about



sell in favour of plaintiff and possession of plaintiff over the Schedule I property. P.W.11 and P.W.12 have also stated the same thing. P.W.13 and P.W.14 are formal witnesses. P.W.15 has proved “sudhbharna” which has been marked as Exhibit 8, Exhibit 8/A and Exhibit 8/B. P.W. 16 has proved the record of C.O. which has been marked as Exhibit 9. Likewise, P.W.17 has proved Exhibit 10 and Exhibit 11. P.W.18 is Laddu Lal Sah, son of Kishun Lal and Girja Devi. He has stated that after purchase, his father came in possession and his father was paying rent to Raj Bainaili. The purchase was made in the name of his mother. He has given the numbers of the trees i.e., Mango, Amrud etc. After partition, he got the suit property with his brother, Satya Narain Prasad. Janki Prasad Singh was never in possession. There was negotiation to purchase the land by the plaintiff and the defendant no.1. The negotiation was final and plaintiff purchased 1 bigha 15 katthas and 1 bigha 5 katthas was purchased by defendant no.1. The defendant no.1 purchased the land in the name of his mother-in-law, Genda Devi. Both the brothers signed on the sale deeds. There was some mistake in the boundary of the land of plaintiff and defendant no.1 in the sale deed.

(18) From the above evidences of the plaintiffs, it appears that almost all the witnesses have supported the case of the plaintiffs regarding the title and possession on the basis of the sale


deed executed by the sons of Girja Devi who in turn has purchased the same from heirs of Mungeri Sah.

(19) Now let us consider the documentary evidences. Exhibit 2 is the registered sale deed dated 28.07.1934 executed by Pratap and his brothers, son of Bhagwan Das in favour of Smt. Girja Devi, wife of Kishun Lal Sah. This sale deed is of the year 1934. Exhibit 2A is the sale deed dated 18.08.1962 executed by sons of Girja Devi in favour of the plaintiff. Exhibit 3 series are the rent receipts. Exhibit 4 is the Register II. Exhibit 5 is the correction deed by which the boundary of the land of plaintiff's sale deed was corrected. Exhibit 6 is the registered deed of "samarpannama" dated 02.03.1936. This Exhibit 6 has been filed by the plaintiff to show that Janki Prasad Singh had dedicated all his properties to Thakurbari as far back as in the year 1936. In such circumstances, there was no question of inheritance by his Gotias as claimed by Shital and Chunchun, the vendor of defendant 1st party and defendant 2nd party arises. From perusal of this Exhibit 6, it appears that Janki Prasad Singh has dedicated his entire properties to Thakurbari. He has stated that after his death, Babu Nunu Choudhary will be shivayat. After his death, his heirs will be the shivayat. At paragraph 12 of this "samarpannama", Exhibit 6, he has clearly stated that even if there is any khas Gotia of Manmokir i.e. Gotia of the executant, they

have no concern with the property of Janki Prasad Singh and they will have no right to claim over the dedicated property and if any claim is made that will be illegal and they will never be shivayat of the Thakurbari in any condition.


(20) We have seen the case of the defendants that on the death of Janki Prasad Singh, the entire property was inherited by his Gotia, Shital Singh and Chunchun Singh. So far this fact is concerned, it is clearly falsified by this Exhibit 6 which is of the year 1936 and is a registered document. In such circumstances, even if there was no surrender by Janki Prasad Singh, the property will go to Thakurbari and not to his agnates. There is no satisfactory evidence as has been held by the trial court itself as to how Chunchun Singh and Shital Singh claimed themselves to be agnates of Janki Prasad Singh. It appears that the learned court below has not at all considered this aspect of the matter. If the property was of Janki Prasad Singh then it was dedicated to Thakurbari. If it was not his property then how Shital and Chunchun inherited the same. Further, the sale deed in the name of Girja Devi is of the year 1934.

(21) In the case of **Vimal Chand Ghevarchand Jain and ors. Vs. Ramakant Eknath Jadoo, (2009)5 SCC 713**, the Apex Court has held that registered deed of sale carries presumption that the transaction was genuine one. As stated above here, in the present



case, the only pleading is that Girja Devi never acquired title on the basis of this sale deed because the heirs of Mungeri Sah had no title. In other words, the defendants admitted the execution of the sale deed by heirs of Mungeri Sah. The rent receipts have been produced by the plaintiff, Exhibit 7 series to show that her name was mutated in the estate of Raj Bainaili and she was paying rent. These documents were produced to show her possession but the learned court below disbelieved the rent receipt holding that since after purchase she became the tenure holder and, therefore, there was no question of mutation and payment of rent arises. Here, it may be mentioned that after purchase she became a co-tenure holder, therefore, she was liable to pay rent in view of second para of Section 22 of the Bihar Tenancy Act. Moreover, these documents are very old documents and were granted when there was no dispute between the parties. In such view of the matter, even if the rent receipts are against the provision then also, the possession of Girja Devi cannot be denied.

(22) The next case of the defendant is that Janki Prasad Singh never surrendered the suit property. The plaintiffs have produced the certified copy of the final decree passed in Partition Suit No.634 of 1910 which has been marked as Exhibit 13. This Exhibit 13 has been produced to show that in fact, Janki Prasad



Singh was the bataidar only and the heirs of Mungeri Sah were the tenure holder and they partitioned the property through court. The learned trial court disbelieved this partition decree on the ground that P.W.18 has stated that in the year 1930, Janki Prasad Singh orally surrendered the property then in such circumstances, how this property was partitioned in the year 1910. In my opinion, the trial court has approached in wrong angle. The tenure holder had the right to partition the property and in that suit it was not necessary to include the bataidar. Admittedly, Janki Prasad Singh was the bataidar. The tenure holder partitioned the property with a view to get the rent from the bataidar. Therefore, the right to receive the rent was partitioned. On that ground, the case of the plaintiff cannot be disbelieved. The other aspect of the matter is that had it not been surrendered and the property remained as that of Janki Prasad Singh then also the property was dedicated to Thakurbari. In no case, the property will go to agnate.

(23) In the case of **Inderjit Singh Grewal vs. State of Punjab, 2012(1) BLJ S.C. 42**, the Apex Court has held at paragraph 12 to 14 as follows:

“12. However, the question does arise as to whether it is permissible for a party to treat the judgment and order as null and void without getting it set aside from the competent court.

The issue is no more res integra and

stands settled by a catena of decisions of this Court. For setting aside such an order, even if void, the party has to approach the appropriate forum.(Vide: State of Kerala vs. M.K.Kunhikannan Nambiar Manjeri Manikoth, Naduvil(dead) & Ors., AIR 1996 SC 906; and Tayabbhai M. Bagasarwalla & Anr. vs. Hind Rubber Industries Pvt. Ltd., AIR 1997 SC 1240).

13. In sultan Sadik vs. Sanjay Raj Subba & Ors., AIR 2004 SC 1377, this Court held that there cannot be any doubt that even if an order is void or voidable, the same requires to be set aside by the competent court.

14. In M. Meenakshi & Ors. Vs. Metadin Agarwal(dead) by Lrs. & Ors., (2006)7 SCC 470, this Court considered the issue at length and observed that if the party feels that the order passed by the court or a statutory authority is non-est/void, he should question the validity of the said order before the appropriate forum resorting to the appropriate proceedings. The Court observed as under:-

“It is well settled principle of law that even a void order is required to be set aside by a competent Court of law, inasmuch as an order may be void in respect of one person but may be valid in respect of another. A void order is necessarily not non-est. An order cannot be declared to be void in collateral proceedings and that too in the absence of the authorities who were the authors thereof.”

Similar view has been reiterated by this Court in Sneh Gupta vs. Devi Sarup & Ors., (2009)6 SCC 194.

From the above, it is evident that even if a decree is void ab initio, declaration to that effect has to be obtained by the person aggrieved from the competent court. More so, such a declaration cannot be obtained in collateral proceedings.”


(24) From perusal of the impugned judgment and decree, it appears that the trial court disbelieved the case of partition by Exhibit 13 on the ground that P.W.1 has stated at paragraph 12 that in 1930, Janki Prasad Singh orally surrendered then how the partition took place prior to the surrender. We have discussed this reasoning of the trial court above. In my opinion, the reasoning assigned by the trial court cannot be accepted. So far the surrender is concerned, the trial court disbelieved the same on this very ground. Again the tenure holder did not acquire status of Raiyat and, therefore, there was no occasion for grant of rent receipts in the name of Pratap Chand Sah, legal heirs of Mungeri Sah. Therefore, the rent receipts, Exhibit 7/T by Raj Bainaili in favour of Pratap Chand Sah was not in accordance with provision of law. Therefore, no question of mutation in the name of Girja Devi arises. In such circumstances, the story of surrender and the grant of rent receipts and the mutation of the name of Girja Devi appear against the provision of law. These reasonings of the trial court are erroneous and in my opinion, on these grounds, the oral surrender pleaded by the plaintiff cannot be disbelieved particularly when the registered sale deed remains unchallenged. The rent receipts are very old receipts granted by Raj Bainaili. Further, the partition decree of the Civil Court, Exhibit 13 of the year 1910 could not have been disbelieved on the statement of

P.W.1 at paragraph 12 that surrender was made in 1930. Therefore, it appears that the trial court compared the documentary evidences vis-à-vis oral evidences and disbelieved the documentary evidences.

(25) The defendants have also examined the witnesses in support of their case. D.W.1 and D.W.2 both have stated only the possession of defendant no.1. D.W.3 is defendant no.1 himself. He has stated that he and Kusheshwar Jha had purchased 3 bighas 5 dhurs jointly of plot no.499 from Chunchun Singh and Shital Singh and came in possession of the same property. There was partition between them. At paragraph 9, he has stated that in commutation case, he learnt that the jamabandi of disputed land i.e. plot no.499 has been opened in the name of Laddu Lal and Girja Devi, therefore, his application was rejected. D.W.4 and D.W.5 are formal witnesses. D.W.6 has stated about possession of the defendant. D.W.8 has stated about relation of Chunchun and Shital with Janki Prasad Singh and further stated that Chunchun Singh became the Mahanth of Thakurbari after Janki Prasad Singh. The other witnesses examined on behalf of the defendants have also stated the same thing that the property was in possession of Chunchun and Shital and after purchase, the defendants are in possession of the same.


(26) So far the documentary evidences are concerned, the deed of partition, Exhibit C-II has been produced. Exhibit A/I-I

is the sale deed of the year 1960 executed by Chunchun and Shital. From perusal of the trial court judgment, it appears that the trial court held that because the property had already been sold by Exhibit A/I-I on 18.06.1960, the vendors of the plaintiff were neither in possession of the property nor had any title on the same. In my opinion, the learned court below has wrongly disbelieved the documentary evidences right from the decree of the Civil Court of the year 1910, rent receipts granted prior to vesting and the dealings of the properties by the plaintiff and also the Register-II i.e. jamabandi opened in the name of Girja Devi and his sons only on the basis of the sale deed of the year 1960 and on the basis of the fact that on the death of Janki Prasad Singh, his properties were inherited by Chunchun Singh and Shital Singh being Gotia. The witnesses as discussed above examined on behalf of the defendants have only stated about possession of the defendants. The question is whether Chunchun and Shital inherited the property of Janki Prasad Singh. If they inherited then only they can transfer and if not, then there is no question of transfer arises. In such circumstances, when they did not inherit Janki Prasad Singh, how they will be able to transfer valid title and deliver possession to the defendants. For deciding this matter, the trial court has not considered Exhibit 6, the “samarpannama”. We have seen above that in Exhibit 6, it is clearly



mentioned that Janki Prasad Singh dedicated his entire property to Thakurbari. Admittedly, Janki Prasad Singh had about 100 bighas of land. If the suit property belonged to Janki Prasad Singh, how this property was only left and Chunchun and Shital inherited this property only. This aspect of the matter has not been examined by the trial court. The witnesses have only stated about possession. Therefore, even if the defendants are in possession, the title will not be created in other favour because they are not claiming title by adverse possession. Their specific case is that they have purchased the property from Gotia of Janki Prasad Singh. However, the defendant no.1 admitted the fact that he purchased along with the plaintiff from the sons of Girja Devi in the year 1962. Therefore, admittedly, the defendant no.1 also admitted the title and possession of Satya Narain Prasad and Laddu Lal, sons of Girja Devi. Now, therefore, one person cannot be allowed to aprobate and reprobate. Once he admitted the title and got the registered deed executed in his favour, subsequently, he is estopped from challenging the title of that person from whom he got the registered sale deed.

(27) From perusal of the trial court judgment, it appears that much emphasis has been given by the trial court regarding the description of boundary mentioned in the plaint and in the sale deed of the plaintiff. So far this ground of the trial court is concerned, it



can be said that the trial court has not considered the boundary which was corrected by Exhibit 5. So far the sale deeds of the defendants are concerned, those sale deeds will be valid only if the vendor, Chunchun Singh and Shital Singh had the title and possession to convey on them. Here, it appears that there is no reliable evidence adduced by the defendants to prove that the property of Janki Prasad Singh was inherited by his Gotias i.e. only Shital Singh and Chunchun Singh and except them no other person was there.

(28) In view of my above discussion, I find that the learned court below has assigned untenable reasons for not relying the partition decree, Exhibit 13 passed in title suit of the year 1910, the sale deed of the year 1934 in the name of Girja Devi, the rent receipts granted by Raj Bainaili, the jamabandi in the name of Girja Devi and her sons. The learned trial court also did not consider Exhibit 6 and Exhibit 5 in their right perspective and wrongly held that after Janki Prasad Singh, the property was inherited by Shital Singh and Chunchun Singh. In my opinion, in view of the overwhelming documentary evidences and oral evidences, the plaintiffs have been able to prove their title and possession over the suit property purchased by them from sons of Girja Devi namely Laddu Lal and Satya Narain Prasad. I also find that the plaintiffs have been able to prove the fact that Janki Prasad Singh orally

surrendered the suit land in favour of tenure holder, Mungeri Sah and, therefore, subsequently, the heirs of Mungeri Sah sold the land in favour of Girja Devi in the year 1934 and thereafter her names were mutated. Therefore, the findings of the learned trial court are hereby reversed.

(29) In the result, this First Appeal is allowed and the impugned judgment and decrees are set aside. The plaintiff's suit is decreed in toto. Since nobody appeared on behalf of the respondents, no order as to cost.

Saurabh/A.F.R.

(Mungeshwar Sahoo, J)